vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3354 OF 1999

Dadasaheb Kisan Jagdale ... Petitioner

V/s.

The Principal
NMV High School & Anr. ... Respondents

Mr.P.B. Bargude for Petitioner
Mr.R.P. Behere for Respondent Nos.1 and 2

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 19, 2007**

ORAL JUDGMENT:

. The petitioner's services ceased from 1.8.1991. According to the petitioner, he has been wrongly terminated from service by the management. However, the management claims that by a letter dated 26.7.1991 the petitioner had resigned from service. The Respondents have treated this letter as one of resignation and they have accepted it. The petitioner filed an appeal before the School Tribunal alleging that his services had wrongly been terminated on the basis of the letter that he issued on 26.7.1991.

2. It appears that the petitioner filed civil suit No.1078 of 1993 earlier for a declaration and perpetual injunction against the management. This Civil Suit was filed by the petitioner on 11.6.1993 before the Civil

Judge, Senior Division, Pune. The petitioner withdrew the civil suit with liberty to file a fresh suit in respect of the same cause of action. It appears that thereafter the petitioner approached the Deputy Director of Education for redressal of his grievance. He then approached the Lokayukta. The Lokayukta held that it was not possible to look into the petitioner's grievance since it was barred by limitation. The petitioner, therefore, preferred Writ Petition No.2999 of 1996 in this Court challenging the order of the Lokayukta dated 12.12.1995. The petition was dismissed as misconceived on 7.3.1996. The petitioner then preferred an appeal before the School Tribunal i.e. Appeal No.48 of 1996.

3. On 9.4.1999, the school tribunal dismissed the appeal. In their reply the management had brought to the notice of the school tribunal that the petitioner had commenced several proceedings before various fora in which he had failed. The Tribunal held that in view of the fact that the Civil Court had held that it had the jurisdiction to entertain the suit, after which the petitioner chose to withdraw the suit, the petitioner could not succeed in the appeal. The Tribunal thus decided that the appeal was not maintainable in view of Order 23 of the Civil Procedure Code and section 11 of the MEPS Act. Thus, without going into the merits of the dispute between the parties, the Tribunal dismissed

the appeal.

4. Several contentions were raised by the advocate for the Respondent including the fact that the petitioner's letter dated 26.7.1991 was one of resignation which indicated that the Petitioner had no intention to continue in service with the respondents. He submits that he has been informed by the school that the petitioner has not reported for duty at any point thereafter in order to continue in service. In such circumstances, according to the learned advocate, it would be futile to remand the matter to the Tribunal. In my view, this submission cannot be accepted since the Tribunal has not applied its mind to the merits of the case.

5. In my view, the approach of the tribunal was completely erroneous. It is well settled now that the civil Court has no jurisdiction to entertain the grievances of the employees who have been terminated by the management of schools. The Full Bench of this Court in the case of *St.Ulai High School & Anr. v/s. Devendraprasad Jagannath Singh*, **2007(1) BCR 540** has held that the jurisdiction of the civil Court is impliedly barred in respect of matters from which an appeal can be preferred to the School Tribunal under clauses (a) and (b) of sub-section (1) of section 9 of the MEPS Act.

Therefore, employees who wish to ventilate their grievances about matters falling within the purview of section 9(1)(a) and (b) have necessarily to file an appeal under the MEPS Act. Thus, the Tribunal has incorrectly dismissed the appeal. The petitioner has been knocking on the doors of the wrong fora from 1991 to 1996 and therefore the delay in preferring the appeal must be condoned.

6. The appeal is, therefore, remanded to the Tribunal to decide it within six months from today, on merits. Rule made absolute accordingly. No order as to costs.